

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
3 2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
4 (602) 640-9000
5 lhammond@omlaw.com
achapman@omlaw.com
6

7 John M. Sears, 005617
P.O. Box 4080
8 Prescott, Arizona 86302
(928) 778-5208
9 John.Sears@azbar.org
10

11 Attorneys for Defendant

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF YAVAPAI

14 STATE OF ARIZONA,)	No. P1300CR20081339
)	
15 Plaintiff,)	Div. 6
)	
16 vs.)	DEFENDANT'S OBJECTION TO
)	STATE'S REQUEST FOR <i>IN</i>
17 STEVEN CARROLL DEMOCKER,)	CAMERA REVIEW
)	
18 Defendant.)	
)	
19)	
20)	
21)	

22 Steven DeMocker, by and through counsel, hereby objects to the State's Request
23 for *In Camera* Review and requests that the Court deny the State's Request. This
24 objection is based on *Brady v. Maryland*, the due process clause, the confrontation
25 clause, the Fifth, Sixth, Eighth and Fourteenth Amendments and Arizona counterparts,
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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2010 SEP -7 AM 10: 32
JEANNE HICKS, CLERK
BY: B. Chamberlain

1 Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the following
2 Memorandum of Points and Authorities.
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4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 On July 27, 2010, the defense served subpoenas duces tecum to the Yavapai
6 County Sheriff's Office and Yavapai County Human Resources Department for certain
7 personnel records for YCSO employees Luis Huante, John McDormett and Doug
8 Brown. On August 5, 2010, the State filed a Motion to Quash these subpoenas.

9 The defense had previously requested these records from the Yavapai County
10 Sheriff's Office in 2009. In response, the Sheriff's Office disclosed only training
11 records and directed the defense to the County Human Resources Department for the
12 remainder of the records.

13 As a result, the defense served subpoenas duces tecum to both the Yavapai
14 County Sheriff's Office and Yavapai County Human Resources Department for the
15 remainder of the records.

16 The State filed a Motion to Quash Subpoena Decus Tecum and the defense
17 responded. On August 30, the Court granted the Motion to Quash but granted the
18 defense request pursuant to Rule 15.1(g), finding that the requested records raise *Brady*
19 concerns and that the defense had met its burden under Rule 15.1(g) that "the defendant
20 has substantial need in the preparation of the defendant's case for material or
21 information not otherwise covered by Rule 15.1 and that the defendant is unable without
22 undue hardship to obtain the substantial equivalent by other means." See Rule 15.1(g).
23 The Court further directed that the State comply with the request within five days unless
24 a request for a protective order pursuant to Rule 15.1(g) was filed prior to that time. On
25 September 1, the State filed a Request for *In Camera* Review for the Court "to
26 determine whether the records contain any *Brady* material."
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We are uncertain whether the State intended to seek ex parte review. That is the most logical inference from the wording of its Motion, but if that is not what the State seeks, we may have no argument. We do not oppose a step-by-step process where the documents are reviewed by the defense and the Court on a sealed basis with only those documents ultimately deemed potentially relevant produced. It is difficult to see why even this accommodation is necessary, since presumably all of these records are public records under our Arizona Public Records Act, but on behalf of Mr. DeMocker our interest is in having access in the most expeditious manner possible. (In that regard, we also note that the State has indicated that it intends to call Detective Brown this week.)

If the State is seeking an ex parte review, the State’s “Request” is essentially a motion for reconsideration and should be denied. The request asserts that “much of the requested information is not relevant to the officers’ performance and should not be disclosed.” See State’s Motion page 1. The requested records with respect to Huante, McDormett and Brown are as follows:

1. Annual performance appraisals and ratings since 2005.
2. Documentation of voluntary or involuntary demotions since 2005.
3. Documentation of paid or unpaid suspensions since 2005.
4. Rate-of-pay history since hire date.
5. Records of all personnel actions taken since hire date.
6. All citizen complaints founded and unfounded since 2005.
7. All internal investigations sustained and unstained since hire date.
8. All "work-station notes" or equivalent documents/records created by supervisors regarding the employee performance, since 2005.
9. All correspondence with the employee regarding performance, including any performance counseling memorandums, verbal counseling, written reprimands, or corrective action recommended and/or taken since 2005.

1 These documents clearly do relate to performance and given the removal of the
2 original case agent, conflicting trial testimony relating to the reason for his removal, and
3 removal of the replacement case agent as the case agent for trial, the defense has a right
4 to review the personnel and disciplinary records of these YCSO employees and what
5 those records demonstrate about the relationship of these personnel decisions to the
6 investigation and activities in this case. These documents clearly raise potential *Brady*
7 issues and the Court has already made that determination. The Court should deny the
8 State's request to reconsider the Court's finding.

9 Rather than addressing cases relevant to the *Brady* analysis called for in criminal
10 cases, the State's Motion cites instead a case interpreting the public records law in the
11 context of a civil discovery dispute. See State's Motion pg 2, citing *Bolm v. Custodian*
12 *of Records of the Tucson Police*, 193 Ariz. 35, 40 (App. 1998). In *Bolm*, the Court held
13 that as to internal affairs documents, a balancing may be appropriate in the context of a
14 public records request. *Id.* However, the *Bolm* court noted that public records are "not
15 conditioned on his or her showing, or a court finding, that the documents are relevant to
16 anything." *Id.* This circumstance is clearly distinguished from this case where the
17 Court has already determined that the requested materials do raise *Brady* concerns and
18 that the defense has met its burden under Rule 15.1(g). *Bolm* was also decided before
19 adoption of the Arizona Public Records Law that designates the requested records as
20 public records. ARS §39-128 provides as follows: Disciplinary records of public
21 officers and employees; disclosure; exceptions A. "A public body shall maintain all
22 records that are reasonably necessary or appropriate to maintain an accurate knowledge
23 of disciplinary actions, including the employee responses to all disciplinary actions,
24 involving public officers or employees of the public body. The records shall be open to
25 inspection and copying pursuant to this article, unless inspection or disclosure of the
26 records or information in the records is contrary to law." The other case cited by the
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1 State also predates the Arizona Public Records law and relates to a defendant's request
2 for records of the victim of the alleged assault; not potential *Brady* material. *See id.*
3 *citing State v. Cano*, 154 Ariz. 447, 448 (App. 1987).

4 Finally and most respectfully, the request should be denied because the Court is
5 not necessarily in the best position to determine whether or not the documents actually
6 contain *Brady* material.¹ This case has been pending for almost two years, there have
7 been hundreds of thousands of pages of disclosure, police reports and interviews that the
8 Court has not been privy to. The defense is in the best position to determine what
9 constitutes *Brady* information in the context of this complex case. If the State has
10 legitimate privacy concerns, notably not articulated in its request, a protective order is
11 possible as suggested by the Court's order.

12 CONCLUSION

13 Defendant Steven DeMocker, by and through counsel, hereby requests that this
14 Court deny the State's Motion for *In Camera* Inspection and order immediate disclosure
15 of the information at issue.

16 DATED this 7th day of September, 2010.

17 By: 

18 John M. Sears
19 P.O. Box 4080
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21 ¹ In the context of determining whether or not electronic surveillance was conducted in violation of the Fourth
22 Amendment, the Supreme Court has determined that in camera inspection by the Court is not sufficient. *See*
23 *Alderman v. United States*, 394 U.S. 165, 182 (1969). "But winnowing this material from those items which might
24 have made a substantial contribution to the case against a petitioner is a task which should not be entrusted wholly
25 to the court in the first instance. It might be otherwise if the trial judge had only to place the transcript or other
26 record of the surveillance alongside the record evidence and compare the two for textual or substantive
27 similarities. Even that assignment would be difficult enough for the trial judge to perform unaided. But a good deal
28 more is involved. An apparently innocent phrase, a chance remark, a reference to what appears to be a neutral
person or event, the identity of a caller or the individual on the other end of a telephone, or even the manner of
speaking or using words may have special significance to one who knows the more intimate facts of an accused's
life. And yet that information may be wholly colorless and devoid of meaning to one less well acquainted with all
relevant circumstances. Unavoidably, this is a matter of judgment, but in our view the task is too complex, and the
margin for error too great, to rely wholly on the in camera judgment of the trial court to identify those records
which might have contributed to the Government's case."

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Prescott, Arizona 86302

OSBORN MALEDON, P.A.
Larry A. Hammond
Anne M. Chapman
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Defendant

ORIGINAL of the foregoing hand delivered for
filing this 7th day of September, 2010, with:

Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing hand delivered this
this 7th day of September, 2010, to:

The Hon. Warren R. Darrow
Judge Pro Tem B
120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Jeffrey Paupore, Esq.
Prescott Courthouse basket

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